

FERC Finalizes Electric Transmission Siting Rule

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The Federal Energy Regulatory Commission recently approved a final rule governing the filing requirements and procedures for entities asking the Commission to exercise its supplemental authority to site interstate transmission facilities under the Energy Policy Act of 2005.

Commission Chairman Joseph T. Kelliher observed: "One of the major goals of the landmark Energy Policy Act of 2005 was strengthening our Nation's power grid. Today, the Commission takes final action to implement the transmission siting provisions of the Act. Our approach was very respectful of state authority. As a practical reality, I would expect states will continue to site the vast bulk of transmission projects. Congress did not provide for exclusive federal siting authority, and we will use our authority to supplement state transmission siting."

The biggest change from the proposed rule relates to the initiation of pre-filing at the Commission. Under the proposed rule, an applicant was barred from making a formal application for a federal construction permit until one year after initiation of a state proceeding. But pre-filing could be initiated earlier, and could overlap with the state siting proceeding. In response to state concerns, the final rule bars both a formal application and the initiation of pre-filing within one year of initiation of a state proceeding.

The Energy Policy Act provides for supplemental federal authorization of certain electric transmission facilities in national interest electric transmission corridors designated by the Secretary of Energy. In these corridors with power grid capacity constraints or congestion that adversely affects consumers, the Commission may issue permits to construct or modify electric transmission facilities if the Commission finds:

1. A state in which a facility is located does not have siting authority, or state law does not consider interstate benefits;
2. The applicant for the facility is a transmitting utility but does not qualify to apply for siting approval in the state because the applicant does not serve end-use customers in the state;
3. A state with siting authority either withholds approval for more than one year after the application is filed, or one year after the designation of the relevant corridor, whichever is later; or
4. The state conditions its approval such that it will not significantly reduce transmission congestion or it is not economically feasible.

The Commission's final rule addresses comments received from 51 entities in response to a June 16, 2006, notice of proposed rulemaking. The final rule largely affirms the approach outlined in the proposed rule.

A proposal to build or expand electric transmission facilities: must apply to facilities that will be used for transmission in interstate commerce; be consistent with the public interest and enhance energy independence; significantly reduce transmission congestion in interstate commerce and protect or benefit consumers; be consistent with national energy policy and enhance energy infrastructure; and maximize, to the extent reasonable and practicable, existing towers or structures.

The rule encourages maximum participation from all interested stakeholders through a Public Participation Plan and an extensive pre-application and post-application process. The participation plan provides all interested parties, including affected landowners, with information on all aspects of the proposed project, including national and local benefits and environmental

impacts. The participation plan provides for public involvement during the pre-filing and application processes, and must be accessible in a central location in each county through which the proposed project would be located.

The pre-filing process includes consultation with the Director of the Office of Energy Projects (OEP) to determine a project's eligibility for pre-filing, the start of environmental review under the National Environmental Policy Act, numerous public participation opportunities, and a determination by the Director of OEP that an application is ready to be filed for Commission consideration.

Once an application is filed, the rule requires public notification of the application, issuance and solicitation of comments on the draft environmental document, preparation and issuance of a final environmental document, a review of the record and issuance of a final decision by the Commission.

The following are among the significant decisions the Commission made in the final rule:

- The Commission's pre-filing process will not commence until one year after an application has been filed for state review.
- The Commission declined to establish specific criteria on how it will determine whether states have authority to approve the siting of transmission facilities or consider interstate benefits, deciding instead to make these determinations on a case-by-case basis.
- Entities seeking to invoke Commission jurisdiction on the basis of a state's failure to act timely will be required to pursue the requisite application with the state one year prior to commencing pre-filing at the Commission.
- The Commission will consider all information filed with the states as part of its review of the proposed project. However, the Commission is required under the National Environmental Policy Act to conduct its own, independent review of potential environmental impacts.
- The Commission clarified how it intends to implement its notification requirements, with respect to entities that must be notified regarding the project, and how an interested person may access information and participate in the Commission's proceedings.
- The Commission eliminated from the final rule a proposed property value impact analysis, concluding that concerns regarding the accuracy of such studies could delay the development of transmission projects.
- The Commission will convene a number of regional technical outreach conferences after issuance of the final rule.

The final rule, "Regulations for Filing Applications for Permits to Site Interstate Electric Transmission Facilities," takes effect 60 days after publication in the *Federal Register*.

SOURCE: Federal Energy Regulatory Commission